

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Curley Jack, Jr.
Plaintiff

DOCKET NUMBER:

SECTION:

VS.

JUDGE

Progressive County Mutual Insurance Company
Defendant

MAGISTRATE:
UNDER TITLE: 1332 Diversity
Jurisdiction

COMPLAINT FOR DAMAGES

JURISDICTION AND VENUE

1. This action is brought under Diversity jurisdiction. There is complete diversity among the parties and the amount in controversy exceeds \$75,000.00. Pendant jurisdiction over state law claims is invoked. Plaintiff, Curley Jack, Jr., is a person of full age of majority and is a resident of the State of Harris County Texas:

a. Defendant, Progressive County Mutual Insurance Company, a foreign insurance company based and domiciled in the State of Ohio, authorized to do and doing business in Harris County, State of Texas encompassed within the jurisdiction of the Southern District Texas, who at all times mentioned herein issued separate policies of uninsured and underinsured insurance, personal injury protection and medical payment insurance policies, under its named insured Curley Jack, Jr. incorporated by reference and copied in extensio herein, which covered the Plaintiff, Curley Jack, Jr. at all times.

b. At all times material here to Defendant, Progressive County Mutual Insurance Company

is liable unto Petitioner for a reasonable sum in the premises, together with legal interest thereon from date of judicial demand until paid, and for all costs of these proceedings for the following reasons to wit:

CAUSE OF ACTION

2. On December 22, 2017, on or about 9:00 P.M., Plaintiff, Curley Jack, Jr. was operating a White 2014 Nissan Versa in a safe and prudent manner that was temporarily stationary at a stop sign in compliance with traffic laws requiring drivers to make a complete stop at all stop signs on West Orem Drive at the intersection of Kirby Drive in the city of Houston Harris County, Texas.

3. At about the same time, and place directly behind plaintiff's vehicle an unknown person was operating a vehicle in a reckless and imprudent manner at a high rate of speed, then suddenly unexpectedly and without warning, struck the vehicle the Plaintiff was driving causing serious damage to Plaintiff's person and property, and was seen fleeing the scene of the accident.

4. Plaintiff made demand on State Farm Mutual Insurance Company for the per person Policy Limits under the pursuant to its Uninsured Motorist provision, which was primary and said provider tendered policy limits on July 10, 2018.

5. Thereafter, Plaintiff, Curley Jack, Jr., a made demand upon Defendant Progressive County Mutual Insurance Company, for the per person Policy Limits under the Underinsured Motorist (UM) Provision policy provision Claim No.: 18-4506691, which was secondary, to no avail.

5. Defendant, Progressive County Mutual Insurance Company refused to honor said provisions and failed to properly adjust and evaluate said claim and therefore said claim was denied.

6. Mysteriously, Defendant, Progressive County Mutual Insurance Company soon thereafter

granted the claim, and accepted liability under the UM, uninsured provisions of the claim but offered a miniscule amount far below the value of the claim.

COUNT 1 – BREACH OF CONTRACT AND BAD FAITH

7. Plaintiff re-alleges paragraphs 1-6;
8. Plaintiff is entitled to damages against Defendant, Progressive County Mutual Insurance Company;
9. Defendant, Progressive County Mutual Insurance Company is liable unto Plaintiff for its own negligence, and is vicariously responsible and liable under the theory of respondeat superior for the negligence of its employees, agents, and servants, which include but are not limited to the following:
 - a. Breach of Contract;
 - b. Material Breach of Contract;
 - c. Failure to pay claims when properly notified;
 - d. Failure to timely pay claims;
 - e. Breach of Duty of Good Faith and Fair Dealing
 - f. Anticipatory repudiation;
 - g. Bad Faith adjusting of claims;
 - h. Unlawful denial of claims;
 - i. Unfair trade practices,
 - j. Failure to properly investigate claims, and;
 - k. Any and all other acts or omissions which might be shown at the time of this trial.

DAMAGES

10. As a result of the aforementioned incident, Plaintiff, Curley Jack, Jr. suffered severe

injuries to his persons and property which exceed \$150,000.00 in general and special damages and is entitled to an amount of damages reasonably calculated to compensate him for his injuries he sustained but are not limited to:

- a. Past, present and future mental pain, suffering and anguish;
- b. Past, present and future physical pain and suffering and loss of function;
- c. Past, present and future medical expenses;
- d. Loss of enjoyment of life;
- e. Plus treble, and punitive damages;
- f. Along with pre-filing and post filing interest, attorneys' fees and court cost; and
- g. Any and all other damages cognizable by the Constitution of the State of Texas and the United States Constitution.

RELIEF SOUGHT

12. That Plaintiff, Curley Jack, Jr. asks that a Judgment be granted in favor of Plaintiff Curly Jack, Jr. and against the Defendant, Progressive County Mutual Insurance Company stating that said insurer:

- a. That Defendant, Progressive County Mutual Insurance Company did commit Breach of Contract for failing to properly adjust the underlying claim and pay upon notification that the tortfeasors underlying liability policy has been denied for lack of coverage.
- b. That Defendant, Progressive County Mutual Insurance Company did materially commit Breach of Contract;
- c. That Defendant, Progressive County Mutual Insurance Company did fail to pay the underlying claim when properly notified;
- d. That Defendant, Progressive County Mutual Insurance Company failed to timely pay the

underlying claim;

- e. That Defendant, Progressive County Mutual Insurance Company breached its duty of Good Faith and Fair Dealing;
- f. Anticipatory repudiation;
- g. That Defendant, Progressive County Mutual Insurance Company acted in Bad Faith in adjusting the underlying claims;
- h. That Defendant, Progressive County Mutual Insurance Company unlawfully denied the underlying claims;
- i. That Defendant, Progressive County Mutual Insurance Company utilized intentionally and knowingly unfair trade practices,
- j. That Defendant, Progressive County Mutual Insurance Company failed to properly investigate the underlying claims, and;
- k. Any and all other acts or omissions which might be shown at the time of this trial.

PRAYER FOR RELIEF

WTHEREFORE, Plaintiff, Curley Jack, Jr. asks that Defendant, Progressive County Mutual Insurance Company be duly cited and served with a copy of same, to appear and answer same and that a declaratory judgment granted in favor of, and after all legal delays and due proceedings are had that there be judgment in favor of Plaintiff, Curley Jack, Jr. and against Defendant, Progressive County Mutual Insurance Company, in an amount reasonably calculated to compensate Plaintiff for his damages, together with legal interest, from date of judicial demand until paid reasonable attorney's fees, and for all costs of the proceedings and all general and equitable relief this Honorable Court deem necessary.

Respectfully submitted,

DENNIS SPURLING PLLC
ATTORNEYS AT LAW

/s/Dennis D. Spurling

By

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Please Serve:

Progressive County Mutual Insurance Company

Through its Agent for Service of Process:

C T Corporation System

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